

MARY NAN SPEAR

IBLA 77-418

Decided August 16, 1977

Appeal from decision of Eastern States Office, Bureau of Land Management, rejecting drawing entry card ES 14956.

Affirmed.

1. Mineral Leasing Act for Acquired Lands: Generally--Oil and Gas Leases: Acquired Lands Leases--Oil and Gas Leases: Applications: Generally--Oil and Gas Leases: Future and Fractional Interest Leases

An oil and gas lease offer for acquired lands in which the United States owns a fractional mineral interest, filed before September 30, 1976, must have been accompanied by a statement showing the extent of the offeror's ownership of the operating rights to the fractional mineral interest not owned by the United States. An offer which was defective for failure to comply with this mandatory regulation must be rejected where it was filed in the simultaneous drawing procedure.

APPEARANCES: Howell Spear, Esq., Ann Arbor, Michigan, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

In the January 1975 list of parcels of land available for oil and gas leasing, pursuant to 43 CFR Subpart 3112, the Eastern States Office, Bureau of Land Management, posted, inter alia,

- 99 Mississippi, Lamar County, BLMA 079420 T. 2 N., R. 15
W., St. Stephens Meridian,
Sec. 35: N1/2SE1/4, SW1/4SE1/4 total area 120.00 acres. U.S.
Interest 50% net area for rental 60.00 acres. (Rental \$30.00)

At a public drawing to determine the priority of drawing entry cards (DEC), submitted for Parcel 99, first priority went to the DEC of Duncan Miller, second priority to the DEC of Jacqueline Anderson, and third priority to the DEC of Mary Nan Spear.

When these DEC's were filed, 43 CFR 3130.4-4 provided as follows:

Fractional present interests.

An offer for a fractional present interest noncompetitive lease must be executed on a form approved by the Director and it must be accompanied by a statement showing the extent of the offeror's ownership of the operating rights to the fractional mineral interest not owned by the United States in each tract covered by the offer to lease. Ordinarily, the issuance of a lease to one who, upon such issuance, would own less than 50 percent of the operating rights in any such tract, will not be regarded as in the public interest, and an offer leading to such results will be rejected. [Emphasis supplied.]

By decision dated June 2, 1977, Eastern States Office, BLM, rejected all three DEC's drawn for the said Parcel 99 because none of the offerors had accompanied the DEC by the mandatory statement required by 43 CFR 3130.4-4. 1/

Appellant contends essentially that she was not given opportunity to amend her DEC to conform to the regulations, and cites Michael Shearn, 24 IBLA 259 (1976), as support for her contention that it is not necessary to submit a statement of ownership where the United States owns less than 100 percent of the mineral rights.

[1] If a DEC was defective under the regulations in effect when filed, it must be rejected notwithstanding any change in the regulations thereafter, 2/ because an oil and gas lease may only be issued to the first qualified applicant. 30 U.S.C. § 226(c) (1970); 43 CFR 3112.4-1. No curative action subsequently taken can be effective in view of the special procedures established for the

1/ Neither Miller nor Anderson appealed, so as to them, the decision of rejection has become final.

2/ Amendments of the regulations governing fractional interest leases, including 43 CFR 3130.4-4, were published on September 30, 1976, 41 F.R. 43149. The new provision has eliminated the requirement for a statement of interest in the ownership of the non-federally owned fraction.

simultaneous filing of DEC offers. Duncan Miller, 29 IBLA 1 (1977); Frank G. Wells, 28 IBLA 113 (1976). Appellant's reliance on Shearn, supra, is misplaced, as we said in Shearn:

[1] We have repeatedly emphasized that this regulatory requirement is mandatory. Where the United States owns only a fractional mineral interest in the land, the offeror must accompany the offer with a statement showing the extent of the offeror's ownership of the operating rights in the fractional mineral interest not owned by the United States. Where there is no such accompanying statement the offer must be rejected. Margaret Hughey Hugus, 22 IBLA 146 (1975); George H. Isbell, Jr., 20 IBLA 312 (1975); James H. Scott, 18 IBLA 55 (1974); Michigan Wisconsin Pipe Line Co., 17 IBLA 282 (1974); Arthur E. Meinhart, 11 IBLA 138, 80 I.D. 395 (1973). The regulation is clear and free from ambiguity and cannot be disregarded. Michigan Wisconsin Pipe Line Co., supra. It is applicable to both simultaneous and over-the-counter filings. Arthur E. Meinhart, supra.

We adhere to that position.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques

Administrative Judge

We concur:

Joan B. Thompson
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

